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ANNOUNCEMENT TO PRESS CONFERENCE BY REINIER JESSURUN

LOSS

The Tobacco Institute has instructed its lawyers to review the judgment and to advise on the prospects of successfully appealing the decision to the High Court of Australia.

At this point the Institute is enjoined from repeating a statement which it honestly believed and which was shared by many highly qualified scientists and medical practitioners.

Perhaps I can remind you of the history of this litigation.

In July 1986, the Tobacco Institute published a half-page advertisement in newspapers throughout Australia. The advertisement was headed "A message from those who do ... to those who don't".

Shortly after its publication, the Australian Federal of Consumer Organisations ("AFCO") complained that the statement was false and misleading.

AFCO commenced proceedings in the Federal Court of Australia alleging that the statement breached s52 of the Trade Practices Act, which prohibits corporations, like the Tobacco Institute, from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive.

At first instance, the case was heard by Mr Justice Morling.

Mr Justice Morling granted an injunction which prevented the Tobacco Institute republishing the advertisement. In addition, he granted injunctions which prevented the Institute from making certain other statements in trade or commerce.

The Tobacco Institute appealed the judgment.

Today, the Full Court dismissed the Tobacco Institute's appeal.

The injunctions granted by Mr Justice Morling therefore continue.

In spite of today's decision, a lively debate about the possible health consequences of exposure to environmental tobacco smoke continues. Scientific research continues to be undertaken in order to ascertain whether a causal relationship exists between health outcomes and exposure to environmental tobacco smoke. The book of science has not been closed by this legal decision. There are divergent opinions amongst scientific and medical experts as to whether the statistically derived risks reported in epidemiological studies are real or due to confounding factors or bias resulting from the methodology and design of the studies.

Today's decision will not stop the debate. It simply prevents the Tobacco Institute making certain statements. It is in effect, an outright ban on free speech. This kind of ban is not in the best interest of Australians. No industry should be precluded from participating in an ongoing public debate concerning its products.

The Institute is encouraged by some of the comments made by the Full Court in the judgment,

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namely:

[Set out some favourable quotes, assuming there are some]

I will now ask Mr Eggleton and Mr Travers partners of the law firm Clayton Utz who represented the tobacco Institute to comment on and answer questions concerning the judgment. The judgment is important and Mr Eggleton and Mr Travers will be available to answer all your questions about it.

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